

permanent ink or dye, and the letters are printed with a water-dispersible or water-soluble coloring agent 16b.

The Examiner has correctly pointed out that the MPEP states, in part, that the broadest reasonable interpretation of the claim is given during examination. Office Action, pg. 9. However, the complete statement from MPEP section 2173.05(a) is as follows:

During patent examination, the pending claims must be given the broadest reasonable interpretation **consistent with the specification**... (emphasis added; citations omitted)

MPEP section 2173.05(a) also states that:

When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning... (emphasis added; citations omitted)

The section continues and states that "[i]f the claims, read in light of the specification, reasonably apprise those skilled in the art both of the utilization and scope of the invention, and if the language is as precise as the subject matter permits, the statute (35 U.S.C. 112, second paragraph) demands no more." Applicants repeat their contention that the term "character graphic" is adequately defined so that one skilled in the art of absorbent articles would reasonably be apprised of the scope and utilization of the invention based on the claims, in view of the specification. Therefore, the claim must be examined using the definition recited in the specification.

Applicants have defined a "character graphic" at pg. 6, line 10 of the specification as "a graphic containing an anthropomorphous image, and in particular an image having or suggesting human form or appearance which ascribes human motivations, characteristics, or behavior to inanimate objects, animals, natural phenomena, cartoon characters, or the like."

It appears the Examiner is taking a broad interpretation of the word "**character**" and ignoring the defined term "**character graphic**" which is recited in claim 1.

For example, the Examiner states: "It is obvious to have characters, such as those found on a keyboard, to be on diapers (as disclosed in the rejection), therefore it is the examiner's position that it would be reasonable to interpret the word **character** to be a letter of the alphabet." Office Action pg. 9 (emphasis added). The Examiner has ignored the term "**character graphic**" and the specification: one of ordinary skill in the art would understand from the term and the

definition in the specification that a character on a keyboard, without creative modification, is not a **“character graphic.”**

Alpha-numeric characters as displayed on the Examiner’s keyboard – or like the letters that make up this sentence – do not have or suggest human form or appearance and do not depict any sort of human motivations, characteristics or behavior. Only if the letters of the alphabet were depicted in such a way that they would have or suggest human form or appearance which ascribes human motivations, characteristics or behavior would they fall within the definition of a “character graphic.”

The Examiner questions whether a picture of a live dog or a bird would qualify as a “character graphic.” Office Action, pg. 9. The Examiner need only review the definition of the term “character graphic” to know the answer: a picture of a live dog or bird, on their own, would not contain an anthropomorphous image (i.e., nothing suggesting human form or appearance which ascribes human motivations, characteristics or behavior). If instead, for example, the dog was given a shirt and a hat and was shown sitting up driving an automobile such a depiction would clearly fall into the category of “character graphic.” See Figure 1 of the application where a dog depicted as driving an automobile is not given human arms or legs, but is depicted in an act decidedly “non-dog-like” and is depicted with human motivations, characteristics and behavior. This dog is shown sitting upright in an automobile grasping a steering wheel like a human would engage in such an activity.

The Examiner has suggested that motivation could be eating, sleeping, walking, sitting or running. Office Action, pg. 9. Applicants agree with the Examiner, while pointing out that in defining “character graphic” the specification modifies the word “motivations” with the word “human”. By way of example, a picture of a live dog sleeping would not constitute a “character graphic,” but the depiction of a dog sleeping like a human would be a “character graphic.” Perhaps such a dog could be depicted as wearing pajamas and lying under the covers of an elevated bed or some other creative depiction. This is merely one possible example. A creative product designer would only be limited by his or her imagination in coming up with such depictions which portray the dog with human motivations, characteristics or behavior in the place of canine motivations, characteristics or behavior. The same could be said for the motivations of eating, walking and running. A “character graphic” would depict such motivations in a way that is human in nature as compared to the natural behavior of the inanimate objects, animals, or natural phenomena being depicted.

In summary, alphanumeric symbols as displayed on the Examiner's keyboard may constitute "**characters**," as the Examiner has used that term, but they would not constitute "**character graphics**" as Applicants have defined that term. The Examiner cannot abide by MPEP 2173.05(a), requiring that "claims must be given the broadest reasonable interpretation **consistent with the specification**," by ignoring a definition in the specification.

For at least the foregoing reasons, the rejection to claim 1 should be withdrawn. Applicants explicitly reserve the right to identify additional errors in the Office Action and advance further reasons for patentability should the present response not result in withdrawal of the rejection.

B. Rejection Of Claims 1-10 and 13-19 Under 35 U.S.C. § 102 (e)

Claims 1-10 and 13-19 stand rejected under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 5,766,389 issued June 16, 1988 to Brandon et al. (hereinafter "Brandon"). The Examiner contends that Brandon discloses an active graphic. Office Action, page 9. Applicants respectfully traverse the rejection because Brandon does not disclose an "active graphic" as that term is defined in the specification.

Brandon discloses in Figure 1 a registered graphic 38. Beginning at col. 8, line 60, the patent states:

As illustrated in FIG. 1, a registered graphic 38 is selectively positioned on front panel 12, and in this illustration comprises a design of a simulated "fly opening 23", typical of a boy's underwear, and a rainbow, sun, clouds, and cars. The registered graphic 38 can be any type of desired pattern, artistic feature, written instructions, or the like, and is desired to be positioned in the article at a selected location. Naturally, registered graphic 38 comprising a simulated fly opening 23 would be totally unacceptable from an aesthetic and/or functional view point if it were located at crotch panel 16 or back panel 14.

Referring to FIG. 2, another training pant 40 is illustrated, which can be typically used for young girls. In this design, a registered graphic 42 includes simulated waist ruffles 29, simulated leg ruffles 31, a rainbow, sun, clouds, wagon and balloon. Again, any suitable design can be utilized for a training pant intended for use by young girls, so as to be aesthetically and/or functionally pleasing to them and the caregiver.

The Examiner has correctly pointed out that the MPEP states, in part, that the broadest reasonable interpretation of the claim is given during examination. Office Action, pg. 9. However, the complete statement from MPEP section 2173.05(a) is as follows:

During patent examination, the pending claims must be given the broadest reasonable interpretation **consistent with the specification**... (emphasis added; citations omitted)

MPEP section 2173.05(a) also states that:

When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning... (emphasis added; citations omitted)

The section continues and states that “[i]f the claims, read in light of the specification, reasonably apprise those skilled in the art both of the utilization and scope of the invention, and if the language is as precise as the subject matter permits, the statute (35 U.S.C. 112, second paragraph) demands no more.” Applicants repeat their contention that the term “active graphic” is adequately defined so that one skilled in the art of absorbent articles would reasonably be apprised of the scope and utilization of the invention based on the claims, in view of the specification. Therefore, the claim must be examined using the definition recited in the specification.

Applicants have defined an “active graphic” at pg. 2, line 14 of the specification as graphics “constructed to ‘disappear’ or ‘appear’ from view, particularly when the child has an accident and the active object graphic is contacted with urine, but also when the product is in use and the disappearance or appearance occurs over time as a result of exposure to the environment, such as molecules in the air.” These active graphics “may allow the caregiver to interact with the child and teach the child important lessons regarding toilet training.” Application page 2, lines 9-14 and 21-23.

In contradiction with the MPEP, it is clear that **the Examiner has completely ignored Applicants’ specification**. The Office Action at pg. 10 states:

The word active describes something performing an action. Is [sic] the examiner’s position that driving a car is an action, or someone walking is an action. Therefore Brandon disclosing [sic] something being active. And it is the examiner’s position that it would be reasonable to interpret the word active graphic to be a picture of something “driving a car” and therefore Brandon discloses an active graphic.

The Examiner’s interpretation of an “active graphic,” quoted directly above, not only ignores the clear definition provided in the specification, but it also contradicts the clear definition provided in the specification! The graphics in Brandon are not “constructed to ‘disappear’ or ‘appear’ from view” when contacted with urine or exposed to the environment, as would be the case with an “active graphic” according to the present specification. The Examiner cannot abide by MPEP

2173.05(a), requiring that "claims must be given the broadest reasonable interpretation **consistent with the specification**," by ignoring a definition in the specification.

For at least the foregoing reasons, the rejection to claims 1-10 and 13-19 should be withdrawn. Applicants explicitly reserve the right to identify additional errors in the Office Action and advance further reasons for patentability should the present response not result in withdrawal of the rejection.

C. Rejection Of Claims 1-20, 24, 30-31 and 38-39 Under 35 U.S.C. § 103 (a)

Claims 1-20, 24, 30-31 and 38-39 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Brandon in view of Timmons. The Examiner posits that it "would have been obvious to one of ordinary skill in the art to add the wetness indicators of Timmons to the training pants of Brandon in order to provide a visual signal that the pad is wetted and assist in determining if a fresh pad is needed. (see Timmons, column 1)". Office Action, pg. 5.

Applicants respectfully traverse this rejection because the Examiner has not established a case of *prima facie* obviousness. A person of ordinary skill in the art would not combine Brandon and Timmons as proposed by the Examiner.

The graphics shown in Brandon span substantially the full length and width of the front, back and crotch panels 12, 14 and 16. The graphics shown in Timmons span substantially the full length and width of the backing sheet 14. No skilled person would merely combine the graphics of Brandon and Timmons to create overlapping and obstructed images. Rather, if the skilled person were motivated to include a wetness indicator on the type of pant disclosed by Brandon, that skilled person would be motivated to replace the graphics of Brandon with the graphics of Timmons. This does not result in the claimed invention.

Additionally, the graphics shown in Timmons span substantially the full length and width of the backing sheet 14 for a reason. Timmons discloses that a large coverage of coloring agent 16 allows the wearer to know the extent of the wetted area. Timmons, col. 3, lines 9-15 and 26-28. This feature would further motivate the skilled person to replace the graphics of Brandon with the graphics of Timmons. Replacing the graphics of Brandon with the graphics of Timmons does not result in the claimed invention.

The Examiner is picking certain elements of graphic design from one reference and combining them with other elements of graphic design from another reference in order to arrive at

the present invention. The simple motivation of adding a wetness indicator to the pant of Brandon would not lead the skilled person to combine graphic design elements in the manner proposed by the Examiner. It is only with hindsight based on Applicants' specification that this picking and choosing becomes "obvious," and that is not permissible.

The Examiner's selectiveness is evidenced by the following statement: "Therefore if one of ordinary skill in the art would want a wetness indicator, one would look for indicating graphics in the crotch region, due to the fact that is where wetness occurs." Office Action, pg. 10. None of the graphic patterns shown in the drawings of either Brandon or Jitoe (discussed hereinafter) depict indicating graphics only in the crotch region. Nonetheless, the Examiner contends that would be obvious to pick wetness indicating graphics, locate them only in the crotch region – contrary to the references being relied upon, so that those wetness indicating graphics could be combined with unrelated graphics elements from another reference. Applicants respectfully submit that the Examiner's position is not supported.

In summary, the mere desire to use a wetness indicator does not lead to the present invention. It is only with resort to the present application that the skilled person would derive the present combination of elements.

The rejection to claims 1-20, 24, 30-31 and 38-39 should be withdrawn for at least this reason. Applicants explicitly reserve the right to identify additional errors in the Office Action and advance further reasons for patentability should the present response not result in withdrawal of the rejection.

D. Rejection Of Claims 21, 23 and 40 Under 35 U.S.C. § 103 (a)

Dependent claims 21, 23 and 40 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Brandon and Timmons as applied to claims 1-3 and 38 above, and further in view of U.S. Patent 5,389,093 issued February 14, 1995 to Howell. Applicants respectfully traverse the rejection for at least the reasons noted above in regard to the combination of Brandon and Timmons. Accordingly, this rejection should be withdrawn. Applicants explicitly reserve the right to identify additional errors in the Office Action and advance further reasons for patentability should the present response not result in withdrawal of the rejection.

E. Rejection Of Claims 1-3, 22 and 26 Under 35 U.S.C. § 103 (a)

Claims 1-3, 22 and 26 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Brandon in view of U.S. Patent 5,766,212 issued June 16, 1998 to Jitoe et al. (hereinafter "Jitoe"). The Examiner contends that it "would have been obvious to one of ordinary skill in the art to add the wetness indicators of Jitoe to the training pants of Brandon in order for a mother to be reliably informed of a timing of a diaper exchange. (see Jitoe, column 3)". Office Action, page 8.

Applicants respectfully traverse this rejection because the Examiner has not established a case of *prima facie* obviousness. A person of ordinary skill in the art would not combine Brandon and Jitoe as proposed by the Examiner.

Jitoe discloses a diaper including an indicator 18 "adapted to be visually revealed when the indicator 18 is wetted with urine so that display elements 19 can be visually recognized through the backsheet 3 and thereby the mother can be reliably informed of a timing for diaper exchange." Col. 3, lines 10-14.

The graphics shown in Brandon span substantially the full length and width of the front, back and crotch panels 12, 14 and 16. The indicator graphics 18 shown in Jitoe are centered in the front waist region 6. No skilled person would merely combine the graphics of Brandon and Jitoe to create overlapping and obstructed images. Rather, if the skilled person were motivated to include a wetness indicator on the type of pant disclosed by Brandon, that skilled person would be motivated to replace the graphics of Brandon with the graphics of Jitoe. Replacing the graphics of Brandon with the graphics of Jitoe does not result in the claimed invention.

The Examiner is picking certain elements of graphic design from one reference and combining them with other elements of graphic design from another reference in order to arrive at the present invention. The simple motivation of adding a wetness indicator to the pant of Brandon would not lead the skilled person to combine graphic design elements in the manner proposed by the Examiner. It is only with hindsight based on Applicants' specification that this picking and choosing becomes "obvious," and that is not permissible.

The rejection to claims 1-3, 22 and 26 should be withdrawn for at least this reason. Applicants explicitly reserve the right to identify additional errors in the Office Action and advance further reasons for patentability should the present response not result in withdrawal of the rejection.

F. Conclusion

The application contains claims 1-24, 26, 30, 31 and 38-40, which are believed to be in condition for allowance, which action is earnestly requested.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-3617.

Respectfully submitted,

MARK T. CAMMAROTA ET AL.

By: Thomas M. Gage
Thomas M. Gage
Registration No.: 33,385
Attorney for Applicant(s)

CERTIFICATE OF EXPRESS MAILING

I, Mary L. Roberts, hereby certify that on October 25, 2002 this document is being deposited with the United States Postal Service as Express Mail No. 791925413US, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

By: Mary L. Roberts
Mary L. Roberts